

# **RIVER ISLE PSP**

**R. WAYNE HARROD**

**18 SINGLE FAMILY LOTS**



# ISSUE

When BCC upheld the DRC approval of the non-substantial change, did standard condition #1 restart the time for submittal & approval of construction plans to preserve the validity of the PSP?

*Did BCC INTEND to add a new timer on the validity of the PSP?*

# **HISTORY OF RIVER ISLE PSP**

- 1991 – BCC approved PSP March, 19, 1991
  - BCC approved non-substantial change on August 20, 1991
- January 9, 1992 BCC approved PSP extension of one year to 3/19/1993
- 1995 – August 24th
  - DRC confirmed PSP had not expired because construction plans were timely submitted (although not approved).

2013 - December 4th:

- DRC discussion item: validity of the PSP. 1991 Orange County Code provided PSP was voided if construction plans not submitted within one year.
- PSP never expired because construction plans were timely submitted.
- Confirmed by county attorney's representative at DRC.

2014 – requested PSP non-substantial modification.

May 28, 2014:

- DRC approved non-substantial change to PSP. Only change was to remove parcel west of Little Econ.
- Appealed to BCC
- BCC hearing on August 19, 2014.

# 2014 BCC hearing

- BCC upheld DRC determination; and approved non-substantial change, subject to “conditions in staff report”.
- Total hearing was 12 minutes – 3 speakers:
  - 1) Applicant/Scott Glass; 2) Mr. Dugre; 3) Mrs. Yurko (Dugre attorney)
  - Quote: Mrs. Yurko “don’t necessarily have an objection with the non-substantial change”.
  - Motion to uphold DRC decision of approval, subject to conditions in the staff report.
  - Condition #1: “...development based on this approval shall comply with all **applicable** federal, state, and county laws, ordinances, and regulations, which are incorporated herein by reference...” (emphasis added)

# 2017

- Letter from Mr. Dugre asserting the River Isle PSP expired

June 14, 2017

- DRC considered request to determine if amended PSP expired due to standard condition language resetting the timeline for submittal and approval of construction plans.
- 3-2 vote that PSP was expired – appealed to BCC



# DRC DISCUSSION

**SMOGOR:** “The County Commissioners upheld the recommendation of the DRC that it was a non-substantial change. But they also wanted to recognize that a plan was modified that deleted the west side of the property. I don’t think their intention was to reset the clock...”

“I know clearly what the intent of DRC was and I think I understand the intent of the Board and it was not to reset the clock.”

“that was clear that in making a determination that it was a non-substantial change, that it was not their intent to reset the clock, but to allow the PSP to stay valid”

**PRINSELL:** “It comes down to the intent of the Board in 2014”.

**SMOGOR:** “... the plan is still valid based on the intent of the DRC action and by the intent of the Board in making the finding of non-substantial change. The fact that they added the new conditions were simply a reflection of recognizing the new plan, not to invalidate the fact that it was a non-substantial change.”

## Legal consideration:

*because zoning regulations are in derogation of private rights of ownership, such ordinances should be interpreted in favor of the property owner. Rinker Materials Corp. v. City of North Miami, 286 So.2d 552 (Fla.1973)*

# INTENT

According to Assistant County Attorney Joel Prinsell at DRC – “comes down to the *intent* of the BCC in August 2014...”

There is no evidence that the BCC intended to subject the River Isle PSP to a new potential for expiration under the revised county code.

# **INTENT**

As previously recognized by DRC, the APPLICABLE county ordinances are the original PSP expiration provisions that only required subdivision construction plans to be submitted within one year of the PSP approval.

# INTENT

- Not logical: If ALL county code then applied in 2014, THEN IMMEDIATELY the PSP they just approved would not comply with code and could not have same number of lots.
- Result: BCC approves and now code won't allow this PSP development. Buffers/buildable area; pond slopes, etc.

# INTENT

Item considered:

- Non-substantial change to PSP
- (Not) – approval to take away valid unexpired PSP and restart clock on submittal condition.
  - this would be a major substantial change and taking of vested property right
- (Not) – A waiver
  - August 2014 BCC hearing did not meet notice, code and legal requirements needed to effectuate voiding a prior vested PSP and creating a NEW PSP.

# **INTENT**

Affidavit of Commissioner Edwards

Affidavit of Commissioner Boyd

Affidavit of Commissioner Moore-Russell

Affidavit of Commissioner Brummer



# SUMMARY

- 1) Intent of Condition of Approval #1 never raised throughout BCC hearing or the DRC.
- 2) BCC agenda item was consideration of DRC approval of a requested non-substantial change – NOT a substantial change.
- 3) What does that condition mean: Applicable?
  - “Applicable” means 1991 not current. Current Code would not allow this development.

# **SUMMARY CONTINUED**

INTENT – Clear this type of a major change was not discussed or intended (see affidavits).